estate.[18] And it would be an anomaly to say that for the sake of conveying the husband and wife are separate persons, but for the purpose of receiving the identical conveyance they are a unit. Furthermore, at common law a husband could not convey to his wife,[19] and therefore, in order to create an estate by entirety, it was necessary to have the conveyance made to them by a third party. While this is only a matter of procedure for the creation of the estate, it has been held that the same rule is to be followed to-day;[20] and this seems logical, for a man cannot convey to himself.[21] Had the courts in the principal case decided that an estate by entirety was created, they would have established an easy method for escaping the inheritance tax.[22] Because in such an event, the wife would have taken as survivor and not derivatively.[23] The result reached is supported by authority,[24] and is in line with the policy adopted by the majority of courts in these cases, which is to prevent the avoidance of the tax by subterfuge, where this can be accomplished without doing violence to recognized theories of real property law.

AUCTION SALES.—The auction is by no means peculiarly an Anglo-Saxon institution. Although its origin is shrouded in the obscurity of antiquity, it can be traced back in a peculiar form to one of the customs of Babylonia,[1] and although greatly diversified in form is found in practically every existing country.[2] The fundamental principle of all auctions, including the customary form in the United States and England, is to secure the highest possible price by means of open competitive bidding.

When an auction is announced by means of hand-bills, posters or other forms of advertisements, the sound rule is that this amounts only to a declaration of intention on the part of the owner of the goods to be sold or the auctioneer that at the time and place named a sale is to be had of the articles described.[3] It has been suggested that such advertisement is an offer looking to the formation of a unilteral contract upon a person attending the sale and becoming the highest

[18]See Saxon *v.* Saxon (N. Y. 1905) 46 Misc. 202. This case holds that the effect was to create a joint tenancy, but this too seems wrong. The prerequisite of unity of time and title are disregarded. See Dressler *v.* Mulhern (1912) 136 N. Y. S. 1049; Pegg *v.* Pegg (1911) 165 Mich. 228.

[19]See 10 Columbia Law Rev., 776.

[20]Dressler *v.* Mulhern, *supra.*

[21]See Cameron *v.* Steves (1858) 9 N. Bruns. 141.

[22]The estate is not subject to the tax, *In re* Thompson's Estate (N. Y. 1914) 85 Misc. 291.

[23]Wilky *v.* Wilky (1914) 130 Tenn. 430.

[24]Wright *v.* Knapp (1915) 183 Mich. 656. This case held that the conveyance should be considered as made to strangers, and not to husband and wife.

[1]Herodotus, History, c. 196

[2]See Bateman, Auctions, 1-3; Anderson *v.* Wis. Central Ry. (1909) 107 Minn. 296.

[3]Payne *v.* Cave (1788) 3 T. R. 148.

bidder.[4] But the rule in England was early settled by the case of *Payne* v. *Cave*[5] to the effect that the bidder makes the offer, and the fall of the hammer marks the acceptance of the offer and completion of the contract.[6] It follows that in this view of the nature of an auction, either the bidder could retract his bid[7] or the auctioneer withdraw the property before the hammer falls[8] without either incurring any liability in respect of contract.[9] Some doubt was thrown on this view of the auction by the case of *Warlow* v. *Harrison*,[10] and there is a line of cases which contain *dicta* supporting the reasoning in that case,[11] which if applied would lead to the opposite result from that reached in *Payne* v. *Cave*. These cases have been the subject of severe criticism and the tendency, particularly in the United States, is to mistrust any attempt to violate the doctrine of *Payne* v. *Cave*.[12]

It is well settled that the owner of property to be sold may prescribe the terms under which the auction is to be held,[13] and these terms, if announced either in the notice of sale, or by the auctioneer before or during the sale are binding on all the parties to the auction.[14] A difficult question arises when the parol terms of sale as announced by the auctioneer vary from those printed in the advertisement. Some courts hold that parol evidence of the statements made by the auctioneer or other agent of the owner will not be received to vary

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[4]Warlow *v.* Harrison (1859) 1 El. & El. 309. This view is founded on a supposed analogy between sales by auction and an acceptance of an offer of reward, or an acceptance of an offer of carriage found in a time table. The analogy is not close in either case. In the time table case, Denton *v.* Gt. Nor. Ry. (1856) 5 El. & Bl. 860, moreover, the law is usually regarded as unsound. See also Spencer *v.* Harding (1870) L. R. 5 C. P. 561; *In re* Agra Bank (1867) L. R. 2 Ch. 391.

[5]*Supra.*

[6]The only text writer taking an opposite view is Langdell and he admits that the law is as stated. Langdell, Contracts, § 19.

[7]Any doubt there may have been on the subject is now definitely resolved in favor of the rule in Payne *v.* Cave, *supra.* Sale of Goods Act, 1893, St. 56 & 57 Vict., c. 71, § 82, (2).

[8]McPherson *v.* Okanogan Co. (1907) 45 Wash. 285; Warehime *v.* Graf (1896) 83 Md. 98; Anderson *v.* Wis. Central Ry., *supra.*

[9]The same rule applies to judicial sales as to other auctions. Knox *v.* Spratt (1883) 19 Fla. 817, 833; Davis *v.* McCamm (1898) 143 Mo. 172; see Keightly *v.* Birch (1814) 3 Camp. 521, *contra,* Morton *v.* Moore (1883) 4 Ky. L. Rep. 717; State *v.* Johnston (1796) 2 N. C. 293; see Gilbert *v.* Watts DeGolyer Co. (1897) 169 Ill. 129.

[10]*Supra.*

[11]McManus *v.* Fortescue [1907] 2 K. B. 1; Johnson *v.* Boyes [1899] 2 Ch. 73; *In Re* Agra Bank, *supra*; Spencer *v.* Harding, *supra*; Harris *v.* Nickerson (1873) L. R. 8 Q. B. 286; Mainprice *v.* Westley (1865) 6 Best. & S. 420. It will be seen from an examination of these and other cases, that the *dicta* running through them has never been applied and it may be said that there is no case *contra* to Payne *v.* Cave.

[12]Freeman *v.* Poole (R. I. 1915) 93 Atl. 786, on rehearing, 94 Atl. 152.

[13]Farr *v.* John (1867) 23 Iowa 286. See Miller *v.* Baynard (Del. 1863) 2 Houst. 559.

[14]Atkins *v.* Howe (1836) 35 Mass. 16; Moore *v.* Owsley (1873) 37 Tex. 603; Chandler *v.* Morey (1901) 96 Ill. App. 278, affd. 195 Ill. 596; Wright *v.* Wilson (1832) 1 M. & Rob. 207; Mead *v.* Hendry (1844) 1 U. C. Q. B. 238. But see Mitchell *v.* Zimmerman (1885) 109 Pa. 183.

the terms of the written notice.[15] Others admit such evidence,[16] even though the bidder knew nothing of the change in terms.[17] While still a third class would limit its effect to cases where it can be shown that the bidder knew of the parol modification of the conditions of sale as previously announced.[18] Of these views, the second seems preferable. The vendor makes no representations that the terms shall remain unchanged; the advertisement would hardly amount to a written instrument within the parol evidence rule; the conditions are no part of the contract of sale before the fall of the hammer; and the weight of authority would compel the bidder to determine at his peril the exact terms under which he is bidding.[19]

An attempt is seen in the recent New York case of *City of New York* v. *The Union News Co.* (App. Div., 1st Dep., 1915) 154 N. Y. Supp. 638, to extend the vendor's privilege of withdrawal further than has yet been possible. The dock-commissioner of the plaintiff announced in an advertisement, that certain privileges would be sold at the time specified in the notice to the highest bidder, and by the same means announced that the right was reserved to reject "any or all bids, if in his judgment he deems it for the best interests for the City of New York so to do." The defendant became the highest bidder and the privilege was knocked down to it. Thereafter, the plaintiff attempted to exercise its right of rejection. The court refused to allow it, saying that this right could only be exercised before the fall of the hammer. All authority in point is in accord with this decision,[20] and in so holding the court was clearly correct on principle. For admitting that if the reservation were applied only to the rejection of bids before their acceptance it would give the plaintiff no right which it did not already possess, nevertheless the extension of the privilege of rejection would destroy all mutuality in the resulting contract and virtually permit a rescission by one party.

RESIDENCE OF THE PLAINTIFF IN A SUIT FOR DIVORCE AS A BASIS OF JURISDICTION.—The doctrine that the courts of a State and the acts of its legislature exist primarily for the benefit of the citizens of that State,[1] forms the basis of the rule requiring the plaintiff in a suit for divorce to prove that he has a permanent residence within the State.[2]

[15]Chouteau *v.* Goddin (1866) 39 Mo. 229; Gunnis *v.* Erhart (1789) 1 H. Bl. 289; Powell *v.* Edmounds (1810) 12 East 6; Johnson *v.* Buck (1872) 35 N. J. L. 338.

[16]Eisenhauer *v.* Brosnan (1892) 44 La. Ann. 742; Morrison *v.* Morrison (Pa. 1843) 6 Watts & S. 516; Ashcom *v.* Smith (Pa. 1830) 2 P. & W. 211; Satterfield *v.* Smith (1849) 33 N. C. 60.

[17]Vanleer *v.* Fain (1845) 25 Tenn. 104; Wainright *v.* Read (S. C. 1797) 1 Desauss. Eq. 573; Cannon *v.* Mitchell (S. C. 1805) 2 Desauss. Eq. 320; Kennell *v.* Boyer (1909) 144 Iowa 303.

[18]Marston *v.* Waldrhyn (1802) 2 Ky. 112; Nott *v.* Oakey (1841) 19 La. 18. See also Porter *v.* Liddle (La. 1819) 7 Mart. 23.

[19]Bailey *v.* Peters (1906) 28 Ohio C. C. 823 and cases in note 16, *supra*.

[20]Kerr *v.* City of Phila. (Pa. 1871) 8 Phila. 292; Brown *v.* City of New York (N. Y. 1908) 57 Misc. 433, affd. 128 App. Div. 925.

[1]Hinds *v.* Hinds (1855) 1 Iowa 36; Bechtel *v.* Bechtel (1907) 101 Minn. 511.

[2]Yelverton *v.* Yelverton (1859) 1 Swabey & J. 574; Way *v.* Way (1872) 64 Ill. 406.